

THE CORPORATION COMMISSION

Art. 15 § 14

Note 1

concerning their acts and operations as may be required by law, or by the Corporation Commission.

Cross References

Annual reports of corporations, see A.R.S. § 10-125 et seq.
Reports by public service corporations, see A.R.S. § 40-204.
Stocks and bonds of public service corporations, issuance, see A.R.S. § 40-301 et seq.

§ 14. Value of property of public service corporations

Section 14. The Corporation Commission shall, to aid it in the proper discharge of its duties, ascertain the fair value of the property within the State of every public service corporation doing business therein; and every public service corporation doing business within the State shall furnish to the Commission all evidence in its possession, and all assistance in its power, requested by the Commission in aid of the determination of the value of the property within the State of such public service corporation.

Cross References

Valuation of property, hearings, see A.R.S. § 40-251.

Law Review Commentaries

Going-concern value of a public utility in condemnation by a municipality. 6 Ariz.L. Rev. 92 (1964).

Judicial review. 19 Ariz.L.Rev. 488 (1977).

Utility rate regulation, legal aspects of future tests period. Gail L. Gibbons, 16 Ariz.L.Rev. 947 (1974).

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1. In general

Under provision of Const. Art. 15, § 3 that corporation commission shall prescribe just and reasonable rates for public service corporations and that, to aid it in discharge of its duties, commission shall ascertain the "fair value" of property within state of every public service corporation, quoted phrase is not to be considered as synonymous with "prudent investment", but means the value of property at time of inquiry, whereas "prudent investment" relates to value at time of investment and does not allow increase or decrease in cost of construction to influence the rates, as does phrase "fair value". Simms v. Round Val. Light & Power Co. (1956) 80 Ariz. 145, 294 P.2d 378.

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granted a rate increase without first determining a fair rate of return based on finding of fair value, were sufficiently alleged in petition for rehearing to entitle complainant to rely on such charges in superior court, but charge of discrimination against customers of a public utility and other public service corporations by unlawful delegation of discretionary authority to the utility, was not sufficiently alleged in petition for rehearing, except as to charge that order was discriminatory and would deny use of gas service to certain members of public, and such charge could not be relied on in superior court. *State ex rel. Church v. Arizona Corp. Commission* (1963) 94 Ariz. 107, 382 P.2d 222.

14. Evidence

Evidence of present reconstruction costs of existing plant is a best opinion evidence and carriers weakness of some inaccuracy, but corporation commission is entitled to reasonably determine the probative value of such estimates and is not compelled to find its value upon mere speculation and would

not have right to close its mind to legitimate evidence related to current values, but only a reasonable judgment, which considers all relevant factors, is required in matter of evaluating utility properties for rate-fixing purposes. *Simms v. Round Val. Light & Power Co.* (1956) 80 Ariz. 145, 294 P.2d 378.

In action by power company against corporation commission to challenge rate of reduction ordered by commission, trial court could not weigh evidence and make finding of fair value of company's property but could consider evidence only for purpose of determining whether the commission, in its finding of fair value, acted unreasonably in that their finding did not have substantial support in the evidence, was arbitrary, or was otherwise unlawful. *Id.*

In action by power company against corporation commission to challenge reduced rate fixed by commission, evidence was sufficient to sustain commission's finding of fair value. *Id.*

§ 15. Acceptance of constitutional provisions by existing corporations

Section 15. No public service corporation in existence at the time of the admission of this State into the Union shall have the benefit of any future legislation except on condition of complete acceptance of all provisions of this Constitution applicable to public service corporations.

§ 16. Forfeitures for violations

Section 16. If any public service corporation shall violate any of the rules, regulations, orders, or decisions of the Corporation Commission, such corporation shall forfeit and pay to the State not less than one hundred dollars nor more than five thousand dollars for each such violation, to be recovered before any court of competent jurisdiction.

Cross References

Power to impose fines, see Const. Art. 15, § 19.

Violations and penalties, generally, see A.R.S. § 40-421 et seq.

Notes of Decisions

1. In general

Although this section and Const. Art. 15, § 19 provide for punishment by penalty or fine for disobeying an order of the corporation commission, *Laws 1919, Ch. 130, § 8*

(repealed), authorizing punishment for such disobedience under a criminal prosecution, did not violate the guaranty of Const. Art. 2, § 10 that no one shall be punished twice for the same offense. *Haddad v. State* (1921) 23 Ariz. 105, 201 P. 847.

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Upon violation of corporation commission's general orders, complaint could be secured from county attorney charging that motor carrier was in violation and guilty of a misdemeanor or commission's rules and regulations could be enforced by filing a criminal complaint charging a misdemeanor

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pursuant to A.R.S. § 40-660 (repealed), and commission could also fine anyone violating its rules by citing any violation before the commission for contempt and by collecting, in a civil action, any fine assessed. Op. Atty.Gen. No. 59-61.

§ 17. Appeal to courts

Section 17. Nothing herein shall be construed as denying to public service corporations the right of appeal to the courts of the State from the rules, regulations, orders, or decrees fixed by the Corporation Commission, but the rules, regulations, orders, or decrees so fixed shall remain in force pending the decision of the courts.

Cross References

Appeal in action to set aside order of commission, see A.R.S. § 40-254(D).

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Transp. Co. (1964) 95 Ariz. 185, 388 P.2d 236.

Superior court, in order to affirm, modify or set aside corporation commission order, must find that commission's decision was unreasonable or unlawful upon clear and satisfactory evidence. *Id.*

1. In general

Laws 1912, Ch. 90 (see, now, A.R.S. § 40-101 et seq.), which created a state corporation commission and defined its powers, which provided that its orders were not to be suspended by any court during a judicial review thereof, and which imposed such enormous penalties in the way of cumulative fines and imprisonment upon any public service corporation, its officers or employees, for failure to obey any such order, as to practically deprive such corporation of the right to appeal to the courts to determine the validity of any order, was unconstitutional and void as to such provisions, on ground that it would deprive a corporation or an individual against whom an order was made of the equal protection of the laws and would deprive the corporation of its property without due process of law. *Van Dyke v. Geary* (D.C.1914) 218 F. 111, affirmed 37 S.Ct. 483, 244 U.S. 39, 61 L.Ed. 973.

Word "modify", in A.R.S. § 40-254, empowering superior court to affirm, modify or set aside corporation commission order, does not grant right to exercise or supersede essential function of commission. *Arizona Corp. Commission v. Fred Harvey*

2. Jurisdiction of appellate court

Where corporation commission had failed for nine months after company had applied for relief from confiscatory telephone rates to grant any relief, the superior court, on application by the company, had jurisdiction to allow the company to collect, pending determination by the court that a legal rate was fixed by proper public authority, temporary rates, as against claim that such jurisdiction was denied to superior court by Const. Art. 15, § 3, conferring board powers upon the commission to regulate rates and service and that to permit the exercise of such jurisdiction would violate the due process of law clause. *Arizona Corp. Commission v. Mountain States Tel. & Tel. Co.* (1951) 71 Ariz. 404, 228 P.2d 749.

Where corporation commission failed for nine months after company had applied for relief from confiscatory telephone rates to grant any relief, contention that the superior court was without jurisdiction to grant temporary relief pending determination by the court of legal rate, because of remedies by mandamus and contempt proceedings was without merit, as mandamus would be merely a repetition of any existing order

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with time limitations, and the contempt proceedings would not protect the company against interim confiscation. *Id.*

3. Federal courts

Suit by carrier to enjoin enforcement of reparation order by Arizona corporation commission was within jurisdiction of federal court as involving federal question, in view of severity of penalties under state law. *El Paso & S.W.R. Co. v. Arizona Corporation Commission* (D.C.1931) 51 F.2d 573.

4. Scope of appellate review

Scope of appellate review of superior court decision on review of rate-making decision of the corporation commission is coextensive with the superior court's scope, with the exception of hearing new evidence. *City of Tucson v. Citizens Utilities Water Co.* (1972) 17 Ariz.App. 477, 498 P.2d 551.

Rule that hearing before superior court on review of corporation commission order is *de novo* means only that trial court is empowered to reach independent conclusion, and does not mean that court may enter judgment independent and free of A.R.S. § 40-254, limiting authority to af-

firming, modifying or setting aside order. *Ariz. Corp. Commission v. Fred Harvey Transp. Co.* (1964) 95 Ariz. 185, 388 P.2d 236.

Superior court, on review of carrier certification, lacked authority to order corporation commission to issue amended certificate. *Id.*

This section contemplates an "appeal" from order of commission, but this section, intended as a protection to public service corporations, was more than adequately satisfied by scheme under A.R.S. § 40-254 providing for *de novo* review. *Arizona Corp. Commission v. Reliable Transp. Co.* (1960) 86 Ariz. 363, 346 P.2d 1091.

5. Parties

Existing carrier serving all communities along route over which applicant was granted certificate of public convenience and necessity as motor carrier of freight was a "party in interest" authorized by statute to maintain action to set aside order by corporation commission granting the certificate. *Corporation Commission v. Southern Pac. Co.* (1948) 67 Ariz. 87, 191 P.2d 719.

§ 18. Repeal approved election Nov. 3, 1970, eff. Nov. 27, 1970

Historical Note

The governor, on November 27, 1970, proclaimed that the repeal of this section, as proposed by Laws 1970, H.C.R. No. 14, § 4, filed May 12, 1970, had been approved by a majority of the electors in the November 3, 1970 general election and had become law.

The repealed section provided that each corporation commissioner was to receive a

designated salary "until otherwise provided by law", together with his actual necessary expenses while away from home in the discharge of his duties; prior to the repeal of this section, the salary provision was superseded by A.R.S. former § 38-604.

§ 19. Power to impose fines

Section 19. The Corporation Commission shall have the power and authority to enforce its rules, regulations, and orders by the imposition of such fines as it may deem just, within the limitations prescribed in Section 16 of this Article.

Cross References

Violations and penalties, generally, see A.R.S. § 40-421 et seq.

ARTICLE XV.—THE CORPORATION COMMISSION

Section

1. Term limits on Corporation Commission; Composition; election; office and residence; vacancies; qualifications.

§ 1. Term limits on Corporation Commission; Composition; election; office and residence; vacancies; qualifications

Section 1. A. No member of the Corporation Commission shall hold that office for more than one consecutive term. No Corporation Commissioner, after serving that term, may serve in that office until out of office for one full term. Any person who serves one half or more of a term shall be considered to have served one term for purposes of this section. This limitation shall apply to terms of office beginning on or after January 1, 1993.

A Corporation Commission is hereby created to be composed of three persons, who shall be elected at the general election to be held under the provisions of the Enabling Act approved June 20, 1910, and whose term of office shall be co-terminous with that of the Governor of the State elected at the same time, and who shall maintain their chief office, and reside, at the State Capital. At the first general State election held under this Constitution at which a Governor is voted for, three commissioners shall be elected who shall, from and after the first Monday in January next succeeding said election, hold office as follows:

The one receiving the highest number of votes shall serve six years, and the one receiving the second highest number of votes shall serve four years, and the one receiving the third highest number of votes shall serve two years. And one commissioner shall be elected every two years thereafter. In case of vacancy in said office, the Governor shall appoint a commissioner to fill such vacancy. Such appointed commissioner shall fill such vacancy until a commissioner shall be elected at a general election as provided by law, and shall qualify. The qualifications of commissioners may be prescribed by law.

Amended by initiative measure election Nov. 3, 1992, eff. Nov. 23, 1992.

Historical Notes

Proposition 107, based on an initiative measure, proposing amendments to the Constitution of Arizona by amendments of article 4, part 2, § 21, article 5, §§ 1 and 10 to 13, article 15, § 1, and article 19, relating to term limits for congressmen and state officeholders, was approved by the electors at the November 3, 1992 general election as proclaimed by the governor on November 23, 1992.

Proposition 107 of the 1992 general election, § 7, provides:

"Section 7. SEVERABILITY. IF ANY PROVISION OF THIS INITIATIVE OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THE ACT THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ACT ARE SEVERABLE."

Notes of Decisions

3. Vacancies

When a vacancy occurs in the office of corporation commissioner, the governor shall fill such vacancy by appointment until the first day of January of the next odd-numbered year, and, if the six-year term of office will not expire then, the remainder of the term is to be filled at the immediately preceding biennial election. Op.Atty.Gen. No. 184-168.

Where the governor appoints a corporation commissioner to fill a vacancy until a commissioner is elected at a general election to serve the remainder of the vacant term as provided in Const. Art. 15, § 1, the appointed commissioner may serve until the elected commissioner is qualified pursuant to §§ 16-648, 16-650, 38-231 and 38-232. Op. Atty.Gen. No. 184-168.

APPENDIX #3

CHAPTER 2.—PUBLIC SERVICE CORPORATIONS GENERALLY

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ARTICLE 1. REGULATION BY CORPORATION COMMISSION

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§ 40-201. Definitions

Text of section pending constitutional amendment

In this chapter, unless the context otherwise requires:

1. "Commission" means the Arizona corporation commission.
2. "Common carrier" means railroad or street railroad.
3. "Electric plant" includes all property used in connection with the production, transmission or delivery of electricity for light, heat or power for sale.

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4. "Gas plant" includes all property used in connection with the production, transmission or delivery of gas for light, heat or power for sale.

5. "Pipeline" includes all property used in transmission for compensation of air, steam or fluid substances, except water, through pipelines.

6. "Railroad" includes every railway, other than a street railroad, operated for public transportation of persons or property.

7. "Sewer corporation" includes every person owning, controlling, operating or managing any sewage system for profit.

8. "Sewerage system" includes all property used in connection with the collection, treatment, purification and disposal transmission, storage or treatment of sewage.

9. "Street railroad" includes every railway operated along any street or public way for public transportation of persons or property, but does not include a commercial or interurban railway.

10. "Telecommunications corporation" means a public service corporation other than municipal engaged in transmitting messages or furnishing public telegraph or telephone service or operating as a telecommunications common carrier.

11. "Telegraph line" includes all property used in connection with communication by telegraph for compensation with or without the use of transmission wires.

12. "Telephone line" includes all property used in connection with communication by telephone, for compensation, with or without the use of transmission wires.

13. "Transportation of persons" includes every service in connection with the carriage and delivery of a person and his baggage.

14. "Transportation of property" includes every service in connection with the transportation and handling of property.

15. "Water system" includes all property used in connection with the diversion, development, storage, distribution and sale of water for beneficial uses for compensation.

Amended by Laws 1974, Ch. 58, § 1; Laws 1979, Ch. 203, § 9; Laws 1984, Ch. 218, § 1, eff. April 19, 1984.

For text of conditional amendment, see § 40-201, post

§ 40-201. Definitions

Text of constitutional amendment

In this chapter, unless the context otherwise requires:

1. "Commission" means the Arizona corporation commission.

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2. "Common carrier" means railroad or street railroad.
3. "Electric plant" includes all property used in connection with the production, transmission or delivery of electricity for light, heat or power for sale.
4. "Gas plant" includes all property used in connection with the production, transmission or delivery of gas for light, heat or power for sale.
5. "Pipeline" includes all property used in transmission for compensation of air, steam or fluid substances, except water, through pipelines.
6. "Railroad" includes every railway, other than a street railroad, operated for public transportation of persons or property.
7. "Sewer corporation" includes every person owning, controlling, operating or managing any sewage system for profit.
8. "Sewerage system" includes all property used in connection with the collection, treatment, purification and disposal transmission, storage or treatment of sewage.
9. "Street railroad" includes every railway operated along any street or public way for public transportation of persons or property, but does not include a commercial or interurban railway.
10. "Telecommunications corporation" means any corporation or person, other than a telecommunications reseller, providing telecommunications service.
11. "Telecommunications reseller" means any corporation or person purchasing telecommunications service for the purpose of selling such service to a final user.
12. "Telecommunications service" means the provision of public telephone or telecommunications exchange or interexchange service to effect two-way communication.
13. "Transportation of persons" includes every service in connection with the carriage and delivery of a person and his baggage.
14. "Transportation of property" includes every service in connection with the transportation and handling of property.
15. "Water system" includes all property used in connection with the diversion, development, storage, distribution and sale of water for beneficial uses for compensation.

Amended by Laws 1974, Ch. 58, § 1; Laws 1979, Ch. 203, § 9; Laws 1984, Ch. 218, § 1. eff. April 19, 1984; Laws 1985, Ch. 304, § 2.

For text of section pending constitutional amendment, see § 40-201, ante

§ 40-201

Note 8

As respects carrier's liability for unreasonable delay in delivery of goods, a casualty cannot be considered an "Act of God" if it results from or is contributed to by human agency, and that which may be prevented by exercise of reasonable diligence is not an Act of God. *Id.*

A rainstorm of unusual duration or intensity is not necessarily a superhuman cause or "Act of God," as respects carrier's liability for unreasonable delay in delivery of perishable goods. *Id.*

Mere delay in transportation does not create a liability to respond in damages, and rule is that carrier is bound to use reasonable diligence and care, and only negligence will render it liable. *Id.*

Common carriers undertaking to carry perishable goods are held to higher degree of care than one engaged in shipment of other articles not inherently perishable and a failure to comply with such duty which results in loss or injury to shipper renders carrier liable for the loss sustained, unless a proper defense is alleged and proved. *Id.*

Excuses for delay are matters of defense in actions for unreasonable delay by carrier of goods and the carrier must specially

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plead the circumstances which excuse the delay in transportation or delivery. *Id.*

9. Franchises

Though a street railway franchise was granted by a city, the corporation commission had power thereafter, under Const. Art. 15, §§ 3 and 6, and Civ. Code 1913, Title 9, Ch. 11 (now § 40-101 et seq.), to order the company to change the routes of certain of its lines and authorize abandonment of a portion of a line, and such order was ample authority for abandonment by the company of said portion, a franchise not being inviolable except upon mutual consent of immediate parties thereto. *Phoenix Ry. Co. of Arizona v. Lount* (1920) 21 Ariz. 289, 187 P. 933.

10. Water systems

Superior court order requiring head of water works, a public service corporation, to not unreasonably withhold his approval of project which corporation commission had already approved did not constitute illegal attempt to regulate the water works. *Town of Gila Bend v. Walled Lake Door Co.* (1971) 107 Ariz. 545, 490 P.2d 551.

§ 40-202. Power of commission to regulate and supervise public service corporations; duty of public service corporations to comply with regulation

Text of section pending constitutional amendment

A. The commission may supervise and regulate every public service corporation in the state and do all things, whether specifically designated in this title or in addition thereto, necessary and convenient in the exercise of such power and jurisdiction.

B. A public service corporation shall comply with every order, decision, rule or regulation made by the commission in any matter relating to or affecting its business as a public service corporation, and shall do everything necessary to secure compliance with and observance of every such order, decision, rule or regulation.

For text of conditional amendment, see § 40-202, post

§ 40-202. Power of commission to regulate and supervise public service corporations; duty of public service corporations to comply with regulation

Text of constitutional amendment

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§ 40-202.01. Telecommunications corporations; cross-subsidization; prohibition; corporation commission authority to examine books and records

A. Telecommunications corporations providing intrastate telecommunications services shall not subsidize those services which are not regulated with revenues from regulated services. The corporation commission shall have the authority to examine the books and records necessary to determine whether a telecommunications corporation providing such services is subsidizing services which are not regulated with revenues from regulated services.

B. Each company providing telecommunications services subject to regulation by the commission shall segregate its investments, revenues and expenses related to regulated services from its other investments, revenues and expenses. For investments, revenues and expenses that cannot be segregated the corporation shall, subject to commission approval, allocate such investments, revenues and expenses between regulated services and other activities. For the purposes of this section monies from the universal service fund shall not be considered a subsidy. Added by Laws 1985, Ch. 304, § 4.

Conditional Enactment

The enactment of this section by Laws 1985, Ch. 304 is conditioned upon the amendment of the Arizona Constitution to provide for the regulation of corporations (other than municipal) providing telecommunications services.

Historical Note

For legislative intent, savings clause, conditional enactment, and effective date provisions of Laws 1985, Ch. 304, see Historical Note following § 40-201.

following "segregated" was transposed to follow "approval".

1985 Reviser's Note:

Pursuant to authority of § 41-1304.02, in subsection B, second sentence, the comma

§ 40-203. Power of commission to determine and prescribe rates, rules and practices of public service corporations

When the commission finds that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded or collected by any public service corporation for any service, product or commodity, or in connection therewith, or that the rules, regulations, practices or contracts, are unjust, discriminatory or preferential, illegal or insufficient, the commission shall determine and prescribe them by order, as provided in this title.

Historical Note

Source:

Laws 1912, Ch. 90, § 32.
Civ.Code 1913, § 2308.

Rev.Code 1928, § 689.

Code 1939, § 69-218.

Constitutional Provisions

Article 15, § 3 provides in part:

"The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be

made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, * * *".

Cross References

Rates and rate schedules, see § 40-361 et seq.

Administrative Code References

Defining filing requirements in support of request for determination of value of property, or in support of proposed increased rates or charges, see A.C.R.R. R14-2-103.
Electric utilities, definitions, certificate of convenience and necessity, and establishment of service, see A.C.R.R. R14-2-201 et seq.
Requirements for determining depreciation accruals and reserves for public utility rate making purposes, see A.C.R.R. R14-2-102.
Sewer utilities, see A.C.R.R. R14-2-601 et seq.
Water utilities, see A.C.R.R. R14-2-401 et seq.

Law Review Commentaries

Condemnation by municipality, going-concern value of a public utility. 6 Ariz.Law Rev. 92 (1964).

Library References

Public Utilities ⇐145.
C.J.S. Public Utilities §§ 18, 65 to 67.

United States Supreme Court

Constitutional rights. Conduct of privately owned utility, regulated by state, in terminating electric service not attributable to state for Fourteenth Amendment pur-

poses, see Jackson v. Metropolitan Edison Company, 1974, 95 S.Ct. 449, 419 U.S. 345, 42 L.Ed.2d 477.

Notes of Decisions

In general 1
Establishment of rates 4
Injunction 7
Operations subject to regulation 3
Primary jurisdiction 2
Rates of bankrupt corporations 6
Recovery of excess rates 8
Review, rate of return 5

1. In general
An order of the state corporation commission, requiring a railroad to transport a show at a special rate and providing that the company might enter into a contract for the transportation on terms similar to existing contracts with other shows, did not deprive the carrier of its right to contract as private carrier for the transportation of traveling shows, and thereby deprive it of equal protection of the laws. Southern Pac.

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sion of Arizona fixing rates to be charged by the company. *Bonbright v. Geary* (D.C. 1914) 210 F. 44.

8. Recovery of excess rates

Where statutes did not define a maximum lawful rate for the services of a public corporation, if prices were exacted which, in

the light of all the facts considered, were unreasonably high, one who paid such prices under protest, or under such circumstances as did not amount to acquiescence in the charge, could have by suit recovered the excess over a reasonable price. *Salt River Valley Canal Co. v. Nelssen* (1906) 10 Ariz. 9, 85 P. 117, 12 L.R.A.,N.S., 711, 16 Ann.Cas. 796.

§ 40-204. Reports by public service corporations to commission; duty of corporation to deliver documents to commission; confidential nature of information furnished; exception; classification

A. Every public service corporation shall furnish to the commission, in the form and detail the commission prescribes, tabulations, computations, annual reports, monthly or periodical reports of earnings and expenses, and all other information required by it to carry into effect the provisions of this title and shall make specific answers to all questions submitted by the commission. If a corporation is unable to answer any question, it shall give a good and sufficient reason therefor.

B. When required by the commission, a public service corporation shall deliver to the commission copies of any maps, profiles, contracts, franchises, books, papers and records in its possession, or in any way relating to its property or affecting its business, and also a complete inventory of all its property in the form the commission directs.

C. No information furnished to the commission by a public service corporation, except matters specifically required to be open to public inspection, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.

D. Any officer or employee of the commission who knowingly divulges any such information is guilty of a class 2 misdemeanor.

Amended by Laws 1978, Ch. 201, § 696, eff. Oct. 1, 1978.

Historical Note

Source:

Laws 1912, Ch. 90, § 28.
Civ.Code 1913, § 2304.
Rev.Code 1928, § 687.
Code 1939, § 69-216.

The 1978 amendment inserted "knowingly" preceding "divulges" and "class 2" preceding "misdemeanor" in subsec. D.

For application and effective date provision of Laws 1978, Ch. 201, see Historical Note following § 1-215.

Constitutional Provisions

Article 15, § 4 provides:

"The Corporation Commission, and the several members thereof, shall have power

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to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the State, and for the purpose of the Commission, and of the several members thereof, shall have the power of a court of

general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the State. Said Commission shall have power to take testimony under commission or deposition either within or without the State."

Cross References

Fines, see § 13-801 et seq.

Offenses,

Classification, see § 13-601 et seq.

Culpable mental state, see § 13-105.

Sentences of imprisonment, see § 13-701 et seq.

Library References

Public Utilities ⇐145.

C.J.S. Public Utilities §§ 18, 65 to 67.

Notes of Decisions

1. In general

Purpose of sworn report which corporation is required to make to corporation com-

mission was to give notice to public in general of condition of corporation. *Monterey Water Co. v. Voorhees* (1935) 45 Ariz. 338, 43 P.2d 196.

§ 40-205. Regulation of commercial flight operators by commission prohibited; definitions

A. Notwithstanding any other provision of law, the corporation commission may not regulate commercial flight operations or commercial flight operators.

B. For purposes of this section:

1. "Commercial flight operation" means the carrying of persons or goods for hire, including the conducting of flight instruction for compensation.

2. "Commercial flight operator" means a person who conducts commercial flight operations.

Added by Laws 1963, Ch. 101, § 3, eff. April 11, 1963. Amended by Laws 1974, Ch. 136, § 39; Laws 1981, Ch. 27, § 2.

Historical Note

Laws 1972, Ch. 87, § 115 repealed this section upon the condition that the Arizona constitution be amended. The proposed amendment to which Laws 1972, Ch. 87 referred was rejected by the electorate. See Historical Note following § 40-101.

The 1974 amendment substituted "§ 28-1749" for "§ 2-209".

The 1981 amendment rewrote the section, which had read:

"Any other provision of law to the contrary notwithstanding, the corporation commission shall have no power or authority to regulate commercial flight operations or commercial flight operators, as defined in § 28-1749."

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Library References

Aviation 7.
C.J.S. Aeronautics and Aerospace § 12.

Notes of Decisions

In general 2
Certificate of public convenience 3
Validity 1

commission and former § 2-209 did not limit power of commission to require and issue certificates of public convenience and necessity for common carriers by aircraft. *Id.*

1. Validity

Provisions of § 40-205 and former § 2-209 (repealed) pertaining to regulation of commercial flight operators and commercial flight operations were not in conflict with provisions of Const. Art. 15, § 1 et seq. relating to powers of Arizona corporation commission so as to render the sections unconstitutional. *Grand Canyon Airlines, Inc. v. Arizona Aviation, Inc.* (1970) 12 Ariz. App. 252, 469 P.2d 486.

Federal preemption in area of intrastate regulation and control of air commerce does not embrace field of economic regulation of such commerce, and latter regulation remains appropriate area for state control. *Id.*

2. In general

Power vested in corporation commission by the Constitution to regulate public service corporations cannot be limited by statute. *Arizona Corp. Commission v. Superior Court In and For Maricopa County* (1969) 105 Ariz. 56, 459 P.2d 489.

Section 40-205 providing that corporation commission shall have no power to regulate commercial flight operations or commercial flight operators was read in conjunction with former § 2-209 (repealed) governing commercial flight operations to provide that commission shall have no power or authority to certificate commercial flight operations or require such operators to carry insurance, and, as so read, this section was not in conflict with constitutional powers of

3. Certificate of public convenience

Persons or corporations engaged in intrastate air commerce as common carriers are subject to regulation and control by Arizona corporation commission and must obtain certificates of convenience and necessity from that body. *Grand Canyon Airlines, Inc. v. Arizona Aviation, Inc.* (1970) 12 Ariz. App. 252, 469 P.2d 486.

Requirement of certificate of convenience and necessity as condition precedent to engaging in intrastate air commerce at Grand Canyon National Park Airport did not violate federal requirement that said airport will be available for public use on fair and reasonable terms and without unjust discrimination and did not constitute granting of exclusive right for use of any land in area or air navigation facility. *Id.*

Arizona corporation commission may lawfully and properly require issuance of certificate of convenience and necessity to carrier as condition precedent to its operating as intrastate common carrier by aircraft for compensation at Grand Canyon National Park Airport. *Id.*

Any person engaged in the transportation of persons or property for compensation as a common carrier, including transportation by aircraft, shall not operate within Arizona as such without first having obtained from the corporation commission a certificate of public convenience and necessity. *Arizona Corp. Commission v. Superior Court In and For Maricopa County* (1969) 105 Ariz. 56, 459 P.2d 489.

§ 40-206. Exemption of motor carriers

This chapter does not apply to motor carriers, as defined in § 28-1599.
Added by Laws 1979, Ch. 203, § 10. Amended by Laws 1981, Ch. 207, § 9; Laws 1982, Ch. 286, § 8, eff. May 1, 1982.

Historical Note

For conditional, delayed effective date provision of Laws 1979, Ch. 203 and information as to the occurrence of the condition, see Historical Note following § 28-2401.

The 1981 amendment substituted "motor carriers as defined in §§ 28-1231 and 28-1599" for "common motor carriers and pri-

vate motor carriers, as defined in § 28-2301".

For legislative intent regarding termination of provisions added or amended by Laws 1981, Ch. 207, see note preceding § 28-1599.

The 1982 amendment substituted "§ 28-1599" for "§§ 28-1231 and 28-1599".

Law Review Commentaries

Utility rate schedules, automatic adjustment clauses, due process restraints. 18 Ariz.L.Rev. 453 (1976).

ARTICLE 2. ACCOUNTING

§ 40-221. Power of commission to prescribe record-keeping methods and accounts; conformity with interstate commerce commission requirements; limitation on keeping of accounts

A. The commission may establish a system of accounts to be kept by public service corporations, or classify the corporations and establish a system of accounts for each class, and prescribe the manner in which accounts shall be kept. It may prescribe the forms of accounts, records and memoranda to be kept, including the records of the movement of traffic as well as the receipts and expenditures of money, and any other records necessary to carry out the provisions of this article. The commission may prescribe the accounts in which particular outlays and receipts shall be entered, charged or credited.

B. The system of accounts established or forms prescribed shall not, in the case of corporations subject to the regulations of the interstate commerce commission, be inconsistent with the systems and forms established for the corporations by the interstate commerce commission, but the corporation commission may prescribe forms of accounts, records and memoranda covering information in addition to that required by the interstate commerce commission.

C. It shall be unlawful for any such corporation to keep any accounts, records or memoranda other than those prescribed by the commission, or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed.

Historical Note

Source:
Laws 1912, Ch. 90, § 48.

Civ.Code 1913, § 2324.

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Rev.Code 1928, § 704.
Code 1939, § 69-233.

Laws 1972, Ch. 87, § 75 amended this section upon the condition that the Arizona constitution be amended to abolish the cor-

poration commission and create a public utilities commission. The proposed amendment to which Laws 1972, Ch. 87 referred was rejected by the electorate. See Historical Note following § 40-101.

Library References

Public Utilities ⇐145.
C.J.S. Public Utilities §§ 18, 65 to 67.

§ 40-222. Depreciation accounting

The commission may, after hearing, require public service corporations to carry a proper and adequate depreciation account in accordance with regulations and forms of account it prescribes. It may ascertain and fix the proper and adequate rates of depreciation of the several classes of property for each, and each corporation shall conform its depreciation accounts to the rates so ascertained and fixed, and shall set aside the money so provided for out of earnings and carry such money in a depreciation fund and expend the fund, and the income therefrom, only for the purposes and under rules and regulations, both as to original expenditure and subsequent replacement, as the commission prescribes.

Historical Note

Source:

Laws 1912, Ch. 90, § 49.
Civ.Code 1913, § 2325.

Rev.Code 1928, § 705.
Code 1939, § 69-234.

Library References

Public Utilities ⇐145.
C.J.S. Public Utilities §§ 18, 65 to 67.

ARTICLE 3. INVESTIGATIONS, HEARINGS AND APPEALS

Cross References

Record of proceedings, see § 40-105.

Law Review Commentaries

Utility rate schedules, automatic adjustment clauses, due process restraints. 18
Ariz.L.Rev. 453 (1976).

§ 40-241. Power to examine records and personnel of public service corporations; filing record of examination

A. The commission, each commissioner and person employed by the commission may, at any time, inspect the accounts, books, papers and documents of any public service corporation, and any of such persons who are authorized to administer oaths may examine under oath any officer, agent or employee of such corporation in relation to the business and affairs of the corporation.

B. Any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make the inspection.

C. A written record of such testimony or statement given under oath shall be made and filed with the commission.

Historical Note

Source:

Laws 1912, Ch. 90, § 58.

Civ. Code 1913, § 2334.

Rev. Code 1928, § 712.

Code 1939, § 69-241.

Laws 1972, Ch. 87, § 76 amended this section upon the condition that the Arizona

Constitution be amended to abolish the corporation commission and create a public utilities commission. The proposed amendment to which Laws 1972, Ch. 87 referred was rejected by the electorate. See Historical Note following § 40-101.

Constitutional Provisions

Article 15, § 4 grants to the corporation commission the power to inspect and investigate.

Administrative Code References

Electric utilities, administrative and hearing requirements, see A.C.R.R. R14-2-212.

Rules of practice and procedure before the corporation commission, see A.C.R.R. R14-3-101 et seq.

Library References

Public Utilities ⇐145.

C.J.S. Public Utilities §§ 18, 65 to 67.

Notes of Decisions

Exhaustion of administrative remedies 2
Primary jurisdiction 1

1. Primary jurisdiction

The doctrine of primary jurisdiction is a discretionary rule created by the courts to effectuate the efficient handling of cases in specialized areas where agency expertise may be useful; the doctrine is applied to determine whether the court or the administrative agency should make the initial decision in a particular case. *Campbell v. Mountain States Tel. & Tel. Co.* (App.1978) 120 Ariz. 426, 586 P.2d 987.

In deciding questions of primary jurisdiction, statutorily defined purposes and powers of an administrative agency are indicators of the agency's particular skill and expertise in the specific area. *Id.*

Even though telephone customer's complaint involved adequacy and method of telephone service and despite fact that such issues were within the jurisdiction of the corporation commission, where the customer's complaint dealt with much more than the mere manner and means of providing

telephone service and the customer in fact alleged that the telephone company had tortiously interfered with telephone service, intentionally inflicted emotional distress and invaded the customer's privacy and that the company had breached its contract, and where predominant issue presented by complaint was whether telephone company had committed civil wrongs against customer, corporation commission did not have exclusive primary jurisdiction of complaint and the superior court had jurisdiction. *Id.*

Where issue was whether telephone customer was required to assert her tort and breach of contract claims against telephone company in a complaint to the corporation commission before suing on those claims in superior court and where the customer's suit in superior court did not seek review of any action or decision of the corporation commission, the doctrine of exhaustion of remedies had no relevance; rather, issue was one of primary jurisdiction. *Id.*

Questions involving only the manner and means of providing telephone service raise issues of fact not within the conventional experience of judges but within the duties

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and expertise of the corporation commission and, therefore, if telephone customer's complaint concerned only the technical manner and means of providing telephone service, doctrine of primary jurisdiction would apply and telephone customer would be required to present complaint to the corporation commission before suing telephone company. *Id.*

2. Exhaustion of administrative remedies

Doctrine of exhaustion of remedies applies only when an administrative agency

has original jurisdiction; once such jurisdiction exists, the exhaustion of remedies doctrine is used to determine whether the parties must completely exhaust the available administrative processes before seeking the aid of a court. *Campbell v. Mountain States Tel. & Tel. Co.* (App.1978) 120 Ariz. 426, 586 P.2d 987.

Although exhaustion of remedies is a rule of judicial administration, it is usually applied by virtue of express statutory mandate. *Id.*

§ 40-241.01. Inoperative

Historical Note

Laws 1972, Ch. 87, § 77 added, upon the condition that the Arizona constitution be amended, a § 241.01 which related to the administration of oaths, and the issuance of

subpoenas. The proposed amendment to which Laws 1972, Ch. 87 referred was rejected by the electorate. See Historical Note following § 40-101.

§ 40-242. Production of records kept without state

The commission may require by order served on any public service corporation in the manner provided in this chapter for the service of orders, the production within this state, at a time and place it designates, of any books, accounts, papers or records kept in any office or place without this state, or, at its option, verified copies thereof, so that an examination may be made by the commission or under its direction.

Historical Note

Source:

Laws 1912, Ch. 90, § 59.
Civ.Code 1913, § 2335.

Rev.Code 1928, § 713.
Code 1939, § 69-242.

§ 40-243. Conduct of hearings and investigations; representation by corporate officer or employee

A. All hearings and investigations before the commission or a commissioner shall be governed by this article, and by rules of practice and procedure adopted by the commission. Neither the commission nor a commissioner shall be bound by technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony before the commission or a commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

B. Notwithstanding § 32-261, in a hearing or rehearing conducted pursuant to this article, a public service corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized the officer or employee to represent it.

2. The representation is not the officer's or employee's primary duty for the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

Amended by Laws 1980, Ch. 43, § 1.

Historical Note

Source:

Laws 1912, Ch. 90, § 53.
Civ.Code 1913, § 2329.
Rev.Code 1928, § 709.
Code 1939, § 69-238.

Laws 1972, Ch. 87, § 78 amended this section upon the condition that the Arizona Constitution be amended to abolish the corporation commission and create a public utilities commission. The proposed amendment to which Laws 1972, Ch. 87 referred

was rejected by the electorate. See Historical Note following § 40-101.

The 1980 amendment designated the former text of the section as subsec. A, and added subsec. B.

1980 Reviser's Note:

Pursuant to authority of section 41-1304-02, in the heading of this section "representation by corporate officer or employee" was substituted for "adoption of rules of practice and procedure by commission; rules of evidence".

Constitutional Provisions

Article 15, § 6 provides:

"The law-making power may enlarge the powers and extend the duties of the Corporation Commission, and may prescribe rules

and regulations to govern proceedings instituted by and before it; but, until such rules and regulations are provided by law, the Commission may make rules and regulations to govern such proceedings."

Library References

Public Utilities 161, 167.
C.J.S. Public Utilities §§ 44 to 46, 48, 53,
77, 78, 87, 96.

Notes of Decisions

In general 1

Ex parte communications 3

Powers of commission 2

1. In general

Legislature can delegate legislative power to corporation commission under its paramount power to define the terms upon which the corporation commission can exercise its own constitutionally given legislative power. *Sulger v. Arizona Corp. Commission* (1967) 5 Ariz.App. 69, 423 P.2d 145.

Section 40-243 gives the commission authority to adopt rules of practice and procedure. *Jenney v. Arizona Express, Inc.* (1961) 89 Ariz. 343, 362 P.2d 664.

The writ of prohibition is the proper remedy to prevent action of a judicial or quasi judicial nature when the tribunal is without jurisdiction. *Johnson v. Betts* (1920) 21 Ariz. 365, 188 P. 271.

That a formal complaint was not filed before the corporation commission, nor the witnesses sworn, will not be considered on appeal from a decision of the superior court allowing recovery of a fine assessed by commission where the irregularity was not urged before the commission on motion for rehearing, in view of Civ.Code 1913, § 2342 (now § 40-253) providing that no corporation or person or the state shall in any court urge or rely on any ground not set forth in the application for rehearing, and § 2329 (now § 40-243) providing that informality in